Rajamanikam a/l Adaikalam v Bolton Finance Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO S2-22-412 OF 1996
KAMALANATHAN RATNAM J
25 JANUARY 2000

Civil Procedure *— Striking out — Action — Specific performance — Purchase of property on auction — Extension of time granted without consent of land owner — Purchaser made to believe that he would own property upon full payment — Whether action could be summarily disposed under O 18 r 19 of the Rules of the High Court 1980*

The plaintiff successfully bidded for a piece of property in a public auction in which he had 90 days to pay the defendant. The transfer could not be effected as a caveat was lodged on the property. The defendant's application for an extension of time was granted by the senior assistant registrar even though the consent of the registered owner of the property was not obtained. Upon obtaining the extension of time, the plaintiff with the knowledge of the defendant, took possession of the property, carried out renovations and began to live therein. The conduct of the defendant led the plaintiff to believe that the property would be his upon full payment of the purchase price. Apart from that, the solicitors for the defendant also acted for the plaintiff in respect to the completion of the sale and they also acted for the financiers of the plaintiff who granted a loan for the completion of the sale. The plaintiff had paid the differential sum to the solicitors of the defendant and continued to pay quit rent and assessments up to 1996 when the defendant decided to terminate the sale and purchase agreement. The plaintiff sued for specific performance and the defendant successfully applied to strike out the writ and statement of claim pursuant to O 18 r 19 of the Rules of the High Court 1980 ('the RHC'). The plaintiff appealed. The defendant argued that the consent for the extension of time, if any, was only valid up to 19 November 1994. When the plaintiff argued otherwise, the defendant argued that both parties were clearly acting in breach of the National Land Code 1965.

Held, allowing the appeal with costs:

The plaintiff had raised sufficient arguments to show that this case should not be summarily disposed under O 18 r 19 of the RHC and the plaintiff should be allowed to fully argue his case. This is because the plaintiff was led to believe, through the conduct of the defendant, that notwithstanding the fact that the then registered owner's consent had not been obtained, it was all right for the plaintiff to proceed with the terms of the sale and the plaintiff had taken such steps as a result of it (see p 457D–G).

A [**Bahasa Malaysia summary**

Plaintif telah berjaya membida sebidang tanah di lelong awam di mana beliau kena membayar defendan dalam masa 90 hari. Permohonan defendan untuk perlanjutan masa telah dibenarkan oleh penolong kanan pendaftar walaupun persetujuan tuan punya
B berdaftar hartanah tersebut belum diperolehi. Selepas memperolehi perlanjutan masa, plaintif dengan pengetahuan defendan, telah mengambil milikan hartanah tersebut, membuat pengubahsuaian dan mulai tinggal di sana. Kelakuan defendan telah memyebabkan plaintif mempercayai bahawa hartanah tersebut akan dimilikinya selepas pembayaran penuh harga belian. Selain itu, peguam-peguam untuk
C defendan juga bertindak bagi pihak plaintif berkenaan dengan penyempurnaan jualan tersebut dan bertindak bagi pihak pembiaya plaintif yang telah memberikan pinjaman untuk penyempurnaan jualan tersebut. Plaintif telah membayar baki jumlah perbezaan wang (differential sum) kepada peguam defendan-defendan dan masih
D membayar cukai tanah dan cukai taksiran sehingga 1996 apabila defendan berkeputusan untuk menamatkan perjanjian jual beli tersebut. Plaintif telah mendakwa untuk pelaksanaan spesifik dan defendan telah berjaya memohon untuk mengetepikan writ dan pernyataan tuntutan tersebut menurut A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Plaintif telah merayu. Defendan
E telah berhujah bahawa persetujuan untuk perlanjutan masa, jika ada, hanyalah sah sehingga 19 November 1994. Apabila plaintif telah berhujah sebaliknya, defendan telah berhujah bahawa kedua-dua pihak jelas bertindak melanggar Kanun Tanah Negara 1965.

F **Diputuskan**, membenarkan rayuan tersebut dengan kos:

Plaintif telah membangkitkan hujahan-hujahan yang mencukupi untuk menunjukkan bahawa kes ini tidak patut diputuskan secara terus di bawah A 18 k 19 KMT dan plaintif patutlah dibenarkan untuk menghujahkan dengan penuh kesnya. Ini adalah kerana plaintif
G telah didorong untuk mempercayai, melalui kelakuan defendan, bahawa walaupun hakikat bahawa persetujuan tuan punya tanah berdaftar belum diperolehi, adalah wajar bagi plaintif untuk menepati terma-terma jualan tersebut dan plaintif telah mengambil langkah-langkah sedemikian oleh kerananya (lihat ms 457D–G).]

H

Notes

For a case on striking out an action, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 4335.

I

Legislation referred to

Rules of the High Court 1980 O 18 r 19(1)(a), (b)

Watson Peters (*R Saravanha* with him) (*Watson Peters & Mohd Fuad*) for the plaintiff. A

Beatrice Loi (*Nazri Aziz & Wong*) for the defendant.

Cur Adv Vult

Kamalanathan Ratnam J: B

Facts

The defendant applied to strike out the writ and statement of claim pursuant to O 18 r 19(1)(a) and (b) of the Rules of the High Court 1980 ('RHC'). The learned senior assistant registrar ('the SAR') after hearing arguments granted the order. This is the plaintiff's appeal against that order. On 4 November 1999, I heard full arguments and allowed the appeal with costs. The defendant has since filed a notice of appeal against my said oral decision. C

Findings of the court D

At a public auction, the plaintiff did successfully bid for the purchase of a property in Kuala Lumpur. He then paid 10% deposit. He had an agreed period of 90 days within which to pay the balance. Attached to the proclamation of sale which was exhibited, were the conditions of sale and condition 7 reads as follows: E

> The balance of the purchase money shall be paid in by the purchaser within 90 days from the date of the sale to the senior assistant registrar, High Court, Kuala Lumpur by bank draft. If the purchaser fails to comply with this condition, the deposit shall be forfeited to the plaintiff unless an agreement to extend the time is obtained from the plaintiff. Upon getting the consent to forward it to the senior assistant registrar for approval. F

Since there was a caveat on the said property the transfer could not be effected. However, the learned SAR granted an extension of time sought. On 27 June 1997, I dismissed the present plaintiff's application for an injunction to restrain the defendant from auctioning the said property on the basis that the consent of the then registered owner of the property was G not obtained nor was the then owner given notice of the said extension. An appeal by the plaintiff to the Court of Appeal against this decision was dismissed with costs. It is not in dispute that both the plaintiff and the defendant carried on as if the extension given was valid. The subsequent conduct of the defendant led the plaintiff into believing that the said property would be his upon payment of the full sum. It is also a fact that H upon the extension being granted by the court on the application of the defendant, the plaintiff, with full knowledge of the defendant, entered into possession of the said property, renovated the said property and began to live therein. The plaintiff also settled the quit rent and assessment as of 1993. I

Another very relevant factor that I have to consider in this case is that the solicitors for the defendant, Messrs Soo Thien Meng & Sharizat, also

acted for the plaintiff in respect of the completion of the sale and also acted for the third party financiers, Bank Bumiputra Bhd, which granted the loan for the completion of the sale.

It is also a fact that just about one month after the auction sale, Bank Bumiputra Bhd approved the housing loan to the plaintiff on 1 September 1993 and on 11 October 1994 the loan amount was increased. It is also a fact that the defendant had written to the plaintiff requesting the plaintiff to pay interest for the period between the successful bid and the payment of the full purchase price. It is also a fact that the same solicitors then still acting as agents for the defendant and also as solicitors for Bank Bumiputra Bhd, invited the plaintiff to execute the charge documents in favour of Bank Bumiputra Bhd and that it was at this stage that the defendant had asked the plaintiff to pay the interest earlier referred to. The plaintiff then paid over to the solicitors for the defendant the differential sum amounting to RM24,400. The plaintiff continued paying both the assessments and quit rents up to 1996. The defendant had terminated the sale and purchase agreement. The plaintiff has sued for specific performance of the agreement and has also prayed for damages and costs. There is also an alternative prayer which for the purposes of this appeal I need not go into.

In so far as this appeal is concerned, I need not have to go into the merits of the case. I am satisfied that the plaintiff has raised sufficient arguments to warrant that I allow this appeal with costs. The plaintiff has been led to believe that notwithstanding the fact that the then registered owner's consent had not been obtained, it was alright for the plaintiff to proceed with the terms of the sale. The defendant argued that any purported consent given was only up to 19 November 1994. The plaintiff argued otherwise. The defendant argued that both parties were clearly acting in breach of the National Land Code. Once the defendant had made this concession it became apparent that, by continuing to allow the plaintiff to act like as if he had not been in breach or on the contrary that the defendant, having knowledge of the breach was willing to overlook it, the issue of estoppel arises for consideration. Has the defendant been estopped? For whatever it is worth the plaintiff must be allowed to fully argue his case. This is not such an open and shut case fit for summary disposal under O 18 r 19.

Appeal allowed with costs.

Reported by Chin En Tek